IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8235 OF 2007

Miss.Dhun R. Doctor ...Petitioner

Versus

Mrs.F.K.Sirewalla and Ors ....Respondents

I.S.Irani, for the petitioners.

Chandrakant Chavan, for the respondent no.1.

CORAM: S.C.DHARMADHIKARI, J.

14th December, 2007.

P.C. :

1. This Writ Petition challenges the concurrent judgment and decree of the court of Small Causes in R.A.E.Suit No. 3388 of 1985. The petitioner before me is the original defendant whereas the respondents are original plaintiff and defendant no.2.

2. The landlady had let out to the petitioner

Room No.1 on the ground floor of the building which is more particularly described in the suit. Originally, the tenancy was in the name of the father of the petitioner/defendant.

3. Later on the petitioner was allowed to occupy.

4. All throughout the request was that the petitioner should hand over two rooms which are in her possession and she would be accommodated in one room. Such a decree was claimed all throughout and has been granted.

6. Having perused the judgments of the courts below and other materials, I am satisfied that the respondent no.1 before me has proved her need in respect of the premises. The lower Appellate Court has elaborately discussed the materials which were produced for its perusal. It also heard the parties at length and permitted written submissions to be tendered.

7. The lower Appellate Court has adverted to the requirement of the Respondent no.1 and has observed

that the same is genuine and bonafide. The extended family in the form of the sons who are of marriageable age is something which cannot be said to be alien to the concept of bonafide requirement of residential premises. In para-32 of the impugned appellate judgment, this aspect has been gone into. Further, the Trial Court granted decree of eviction only in respect of part of premises namely,two living rooms out of the suit premises and permitted her to retain possession of kitchen, W.C. and bathroom exclusively. Thus, she has been accommodated in another part of the premises.

8. In such circumstances, findings of facts which are consistent with the materials on record do not warrant any interference and the petition is summarily dismissed.

9. However, considering the age of the petitioner defendant and the fact that she is ailing and presently in hospital, it is directed that the subject decree shall not be enforced and executed till 31.8.2008 provided the petitioner executes an Undertaking in the following terms.

(a) That the petitioner/defendant shall not dispose off, alienate, encumber, part with possession or create third party rights in respect of the premises.

10. The Undertaking to be filed within a period of 15 days from today. Needless to state, that if the petitioner is admitted to hospital and presently in Intensive Care, does not mean that she cannot authorise anybody on her behalf to file such an Undertaking. Such an Undertaking of an authorised person to be accepted, provided, the authorised person also undertakes not to claim any right in the property and in the premises which are occupation of the petitioner. The authorised person also to vacate and hand over peaceful possession on/or before 31.8.2008.

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